



**US Army Corps  
of Engineers**  
Fort Worth District

# Joint Public Notice

**Number:** CESWF-06-RGP-11

**Activity:** Exploration and Production Wells

**Date:** October 6, 2006

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**U.S. ARMY CORPS OF ENGINEERS,  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,  
RAILROAD COMMISSION OF TEXAS,  
AND  
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**SUBJECT:** Evaluation of a proposed U. S. Army Corps of Engineers (USACE) Regional General Permit (RGP) under Section 404 of the Clean Water Act (CWA) for discharges of dredged or fill material into waters of the United States (U.S.) and Section 10 of the Rivers and Harbors Act of 1899 for work in, or affecting, navigable waters of the U.S. and application for water quality certification under Section 401 of the CWA for Section 404 discharges associated with the construction and maintenance of exploration and production wells for oil, gas and water, and their supporting fills and structures. An RGP may not be used to authorize work subject to regulation under Section 404 of the CWA until water quality certification has been issued or waived.

**APPLICATION NUMBER:** The proposed RGP has been designated CESWF-06-RGP-11 in the Fort Worth District, TXG30009 in the Tulsa District, and 2006 00527 in the Albuquerque District, and would replace RGP SWF-01-RGP-11 in the Fort Worth District, TXG30009 in the Tulsa District, and 2001 00047 in the Albuquerque District. The current RGP expires on October 25, 2006.

**DATE ISSUED:** October 6, 2006

**LOCATION:** The provisions of this RGP would be applicable to all waters of the U.S., including all navigable waters of the U.S., within the regulatory boundaries of the Fort Worth, Albuquerque, and Tulsa districts of the USACE, within the states of Texas and Louisiana (see "Location of Work" and Appendixes B and C of the enclosed proposed RGP.) The Fort Worth District includes the Sabine River watershed in Sabine, De Soto, and Caddo Parishes in the State of Louisiana.

**OTHER AGENCY AUTHORIZATIONS:** State Water Quality Certification from the States of Texas and Louisiana

**PROJECT DESCRIPTION:** This proposed RGP, if issued, would provide Department of the Army authorization for recurring work that causes no more than minimal individual and cumulative adverse environmental impacts. An RGP serves to reduce administrative procedures and expedite decisions for

routine permit actions. The enclosed "Proposed Regional General Permit, Exploration and Production Wells" details the scope, location, terms and conditions, and application procedures of the proposed permit. The proposed RGP contains minor changes from CESWF-01-RGP-11 to clarify the terms and conditions of the RGP, update information and requirements, and improve the overall implementation of the RGP.

**PUBLIC INTEREST REVIEW FACTORS:** The proposed RGP will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U.S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to authorize this RGP will be based on an evaluation of the probable impact, including cumulative impact, of the proposal on the public interest. That decision will reflect the national concerns for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposal. Any comments received will be considered by the USACE in determining whether to adopt the proposed RGP. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposal.

**STATE WATER QUALITY CERTIFICATION:** Texas Commission on Environmental Quality (TCEQ) certification is required for work within the state of Texas that is subject to Section 404 of the Clean Water Act. Concurrently with the processing of this Department of the Army proposal, the TCEQ is reviewing this proposal under Section 401 of the Clean Water Act, and Title 31, Texas Administrative Code Section 279.1-.13 to determine if the work authorized by this RGP would comply with State water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. **Any comments concerning the application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087.** The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with the proposed RGP is made available for review in the TCEQ's Austin Office. The complete application must be reviewed in the USACE's office. The TCEQ may conduct a public hearing to consider all comments concerning water quality if requested in writing. A request for a public hearing must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

Railroad Commission of Texas (RRC) certification is required for activities associated with the exploration, development, or production of oil, gas, or geothermal resources, as described in Tex. Nat. Res. Ann. 91.101. Concurrently with the processing of this Department of the Army proposal, the RRC is

reviewing this application under Section 401 of the Clean Water Act and Title 16, Texas Administrative Code, Section 3.93, to determine if the work authorized by the proposed RGP would comply with applicable water quality laws and regulations. By virtue of an agreement between the USACE and the RRC, this public notice is issued for the purpose of advising all known interested persons that there is pending before the RRC a decision on water quality certification under the above authorities. **Written comments concerning the request for certification may be submitted to the Assistant Director, Environmental Services, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967.** The public comment period extends 30 days from the date of publication of this notice. The RRC may also hold a public meeting on the request for certification if the RRC determines that a public meeting is in the public interest. If the RRC holds a meeting to receive public comment on a request for certification, the RRC will give notice of the meeting to the applicant, the USACE, and persons identified under 16 TAC 3.93(d)(2) at least ten days prior to the meeting.

Louisiana Department of Environmental Quality (LDEQ) water quality certification is required. The LDEQ is reviewing this proposal under Section 401 of the CWA and in accordance with Louisiana Revised Statutes of 1950, Title 30, Chapter 11, Part IV, Section 2074 A (3) to determine if the work would comply with State water quality standards and other applicable provisions of the CWA. By virtue of an agreement between the USACE and the LDEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the LDEQ a decision on water quality certification under such act. The LDEQ water quality certification number is JP 060719-01, the LDEQ reviewer is Mr. Jamie Phillippe, and the LDEQ telephone number is (225) 219-3469. **Comments concerning this application for water quality certification in Louisiana must be submitted, using the applicant's name and the above LDEQ water quality certification application number as reference, to the Certifications Supervisor, Attention: Thomas Griggs, Permits Division, Office of Environmental Services, Water Resources, Louisiana Department of Environmental Quality, P. O. Box 4313, Baton Rouge, LA 70821-4313.** The public comment period extends 30 days from the publication date of this notice. A copy of the public notice with a description of work is available for review between 8:00 a. m. and 4:30 p. m. weekdays at the LDEQ office at 602 North 5<sup>th</sup> Street, Baton Rouge, Louisiana 70802. Copies may be obtained upon payment of cost of printing. A final decision on state of Louisiana water quality certification will be made within 60 days after the date of this notice. The LDEQ may conduct a public hearing to consider all comments concerning water quality if requested in writing. A request for a public hearing must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

**THREATENED AND ENDANGERED SPECIES:** No authorization would be granted under this RGP for an activity that is likely to jeopardize the continued existence of an endangered or threatened species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Any activity that may affect an endangered or threatened species would require review by the USACE and consultation with the U. S. Fish and Wildlife Service.

**NATIONAL REGISTER OF HISTORIC PLACES:** The USACE will take into account the impact of activities authorized by this RGP on cultural resources listed, or eligible for listing, in the National Register of Historic Places (NRHP). If known or previously unknown cultural resources are encountered during work authorized by this permit, the permittee shall notify the appropriate USACE district and the resources shall be avoided until the USACE can assess their eligibility for listing in the NRHP. Sites determined to be eligible for listing in the NRHP shall be mitigated in consultation with the USACE. Cultural resources

include prehistoric and historic archeological sites, and areas or structures of cultural interest that occur in the permit area.

**SOLICITATION OF COMMENTS:** This public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

**PUBLIC HEARING:** Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location of the hearing.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before November 6, 2006, the closing date of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the closing date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Presley Hatcher, Regulatory Branch, CESWF-PER-R, U.S. Army Corps of Engineers, P.O. Box 17300, Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth during regular business hours, Monday through Friday. Telephone inquiries may be directed to Mr. Hatcher at (817) 886-1740.

DISTRICT ENGINEER  
FORT WORTH DISTRICT  
CORPS OF ENGINEERS

## **PROPOSED-TO-BE-REISSUED REGIONAL GENERAL PERMIT**

### **EXPLORATION AND PRODUCTION WELLS**

Interested parties are hereby notified that, in accordance with 33 CFR 322.2(f), 323.2(h), and 325.2(e)(2) published in the Federal Register November 13, 1986, the Fort Worth, Albuquerque, and Tulsa districts of the U. S. Army Corps of Engineers (USACE) propose to authorize the work described herein by regional general permit to authorize the work described herein pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The purpose of this RGP is to expedite authorization of recurring work that would have minimal adverse impact on the aquatic environment. This RGP contains provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require an individual permit. However, compliance with the conditions contained in this RGP does not guarantee authorization of the work under this RGP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this permit are prohibited unless authorized by a separate permit.

The proposed RGP has been designated CESWF-06-RGP-11 in the Fort Worth District, TXG30009 in the Tulsa District, and 2006 00527 in the Albuquerque District, and would replace RGP SWF-01-RGP-11 in the Fort Worth District, TXG30009 in the Tulsa District, and 2001 00047 in the Albuquerque District. The current RGP expires on October 25, 2006.

### **SCOPE OF WORK**

Work authorized by this RGP is limited to the discharge of dredged or fill material into waters of the United States (U.S.), including wetlands, and work in, or affecting navigable waters of the U.S., associated with the construction and operation of exploration and production wells for oil, gas, and water and their supporting fills and structures. Activities that may be authorized by this RGP include, but are not limited to, the construction of drilling pads, reserve and mud pits, access roads, dikes, levees, and production facilities, production and storage facilities, pipelines, coffer dams, equipment ramps, borrow pits, disposal areas, and staging areas associated with exploration and production wells. Impacts to waters of the U.S., including wetlands, shall be avoided and minimized through the use of practicable alternatives.

Realignment of streams is allowed only if no practicable alternative exists and appropriate compensatory mitigation is provided, and is restricted to a maximum of 500 linear feet. Appropriate and practicable compensatory mitigation shall be required for unavoidable adverse impacts to waters of the U.S. This RGP does not authorize activities that would have more than minimal adverse impacts on the aquatic environment or cause more than minimal reduction in the reach of waters of the U.S.

The activities listed above are authorized by this RGP provided they meet all of the following criteria:

1. **Well Site:** The discharge of dredged and fill material associated with mechanized land clearing and leveling and for the construction of drilling pads, reserve, mud, and brine pits, water pits, dikes, levees, and associated facilities is limited to an area of 2.5 acres, not including areas for production facilities and access roads. However, both the size of the well site and the amount of dredged and fill material discharged into waters of the U.S., including that necessary for access roads, must be the minimum necessary to accomplish the work. A well site with multiple wells may be authorized provided the limits identified for the well site are not exceeded. In cases where oil-based drilling muds are being used in the drilling operation, containerized mud systems must be used instead of open surface pits. In cases where

water-based drilling muds are being used, the USACE encourages permittees to use containerized mud systems, where practicable. Borrow material used to construct levee, water, and mud pit levees must be obtained from inside the levee if the material is suitable for such use. All pits shall be suitably lined with an impervious material. Permittees shall avoid waters of the U.S., including wetlands, in selecting the location of well sites where practicable alternative sites exist. This permit does not authorize any well site located in a water of the U.S., where any element of that well site is within 600 feet of any feature of another well site (restored or unrestored) located in a water of the U.S. (see "Drilling Termination" and "Well Abandonment" sections below), or within 1,200 feet of the toe of any levee, dike, dam or other work built with Federal funds for flood control or water supply, or by any state or local government without written approval from the appropriate agency. The measurement to determine the above distances shall be between the closest points of the two well site features in question. All fill material placed into waters of the U.S. shall be clean, of suitable quality, and free of contaminants in toxic quantities.

2. Access Roads: Adverse impacts to waters of the U.S., including wetlands, caused by the construction of access roads and turn-arounds shall be minimized by such means as taking the shortest practicable route through waters of the U.S., utilizing existing roads, following previously disturbed areas to the maximum extent practicable, and limiting the width of ground disturbance in constructing access roads and turn-arounds to the minimum amount necessary. The clearing of vegetation for access road rights-of-way in waters of the U.S. must be the minimum necessary and in no case shall exceed a width of 40 feet. Turn-arounds up to 90 feet in diameter may be constructed in waters of the U.S. at one-mile intervals along access roads. Crossings of waters of the U.S. shall be avoided where practicable alternatives exist. Roads shall be designed to pass low flows and expected high flows and not interfere with the migration of aquatic organisms or create impoundments.

All access roads raised above the existing ground elevation in waters of the U.S. must be suitably bridged or culverted to minimize adverse impacts to local drainage patterns. Roads shall not promote the drainage of waters of the U.S. or cause unnecessary impoundment of water. Bridges or culverts for roads in wetlands shall be spaced no further than 500 feet apart and at all surface drainages. Bridges and culverts shall be sized to adequately pass low flows and expected high flows. Roadside borrow ditches shall not be continuous; each section of ditch shall be no longer than 300 feet and shall be separated from adjacent sections of ditch by at least 50 feet of unexcavated ground.

3. Production Facilities: Production facilities shall be located outside of wetlands whenever practicable to minimize adverse impacts to the aquatic environment, provide easier access to these facilities, reduce flood damage, and lessen the potential for contaminating surface water. Production facilities that must be located in wetlands should be centrally located to service as many wells as practicable. The clearing of vegetation in waters of the U.S. for storage and production facilities is limited to one (1) acre. Storage and production equipment shall be properly diked to contain spills and leakage. Production pipelines constructed through waters of the U.S. should follow previously disturbed areas such as access roads, fence lines, and utility line rights-of-way as much as practicable to minimize adverse impacts to the aquatic environment.

4. Erosion and Water Control: All soil-disturbing activities shall be conducted in a manner that will minimize the extent and duration of exposure of unprotected soils. Measures to control erosion and runoff, such as berms, silt screens, sedimentation basins, revegetation, mulching, composting, and similar means, shall be taken as necessary. Damage resulting from sedimentation and/or erosion shall be repaired.

5. Drilling Termination: Upon completion of drilling activity, a thorough and extensive cleanup operation shall be conducted, including removing from the drilling site to an upland disposal site all

saltwater, drilling mud, brine, hydrocarbons, and any substances considered toxic under federal regulations. Only equipment and supplies necessary for operation of the well shall remain onsite. All pits shall be filled within 90 days following the termination of drilling. The disposal of drilling mud and control of accidental spills and discharges shall comply with all applicable state and federal regulations. The portion of the pad, and all other fills and structures, that are no longer needed for well operation and maintenance shall be removed and the area restored to preconstruction contours and conditions within 90 days following the termination of drilling to the maximum extent practicable, unless an alternative resolution is specifically authorized by the USACE. The drilling termination restoration plan shall be provided to the USACE as part of the preconstruction notification (PCN) if required (see “PRECONSTRUCTION NOTIFICATIONS”). Restoration shall generally include the re-establishment of the appropriate hydrology, soils, and vegetation, including native grass and forb herbaceous ground cover and native trees and shrubs that are suitable for the site. For cases where USACE PCN is required, permittees shall submit an interim written compliance report to the USACE within 120 days after drilling termination that includes, at a minimum, the following:

- a. a discussion of how the authorized work and mitigation required to date has been done in accordance with the USACE authorization, including all general and special conditions;
- b. a summary of all construction and mitigation activities that occurred associated with the project, including documentation of the completion of all work and compliance with all terms and conditions of the permit;
- c. a comparison of the post-construction conditions of the project area to the pre-construction conditions of the area;
- d. a detailed description of all impacts to waters of the U.S.;
- e. a map showing the configuration of waters of the U.S., including wetlands, restored after drilling termination;
- f. details of the restoration of waters of the U.S., including wetlands, after drilling termination, addressing hydrology, soils, and vegetation;
- g. a discussion about whether disturbed areas, such as borrow areas, road embankments, stream banks, road crossings, and temporary impact areas are revegetating adequately and not suffering erosion damage;
- h. the status of the well, whether abandoned or producing; and
- i. maps and photographs, as appropriate, to illustrate the information presented.

When the performance standards for the drilling termination restoration plan have been met, permittees shall submit a final written compliance report, following the format prescribed above for the interim compliance report, that documents full compliance with the performance standards.

6. Well Abandonment: Wells shall be plugged and capped in accordance with state regulations prior to abandonment. Unless alternative activities are specifically authorized by the USACE, all drilling pads, dikes, levees, structures, and their foundations and access roads, shall be removed and mud and reserve pits filled. The areas shall be returned to preconstruction conditions, or better, and protected against erosion by

suitable means. Fill material removed from the site shall not be placed in a water of the U.S. without USACE authorization. The restoration of abandoned well sites shall be completed within 90 days of the date the well is plugged, unless an alternative resolution is specifically authorized by the USACE. The well abandonment restoration plan shall be provided to the USACE as part of the preconstruction notification (PCN) if required (see “PRECONSTRUCTION NOTIFICATIONS”). Restoration shall include the re-establishment of the appropriate hydrology, soils, and vegetation, including native grass and forb herbaceous ground cover and native trees and shrubs that are suitable for the site, wherever practicable. For cases where USACE notification is required, permittees shall submit an interim written compliance report to the USACE within 120 days after well abandonment that includes the following, at a minimum:

- a. a discussion of how the authorized work and required mitigation required to date has been done in accordance with the USACE authorization, including all general and special conditions;
- b. a summary of all construction and mitigation activities that occurred associated with the project, including documentation of the completion of all work and compliance with all terms and conditions of the permit;
- c. a comparison of the post-construction conditions of the project area to the pre-construction conditions of the area;
- d. a detailed description of all impacts to waters of the U.S.;
- e. a map showing the configuration of waters of the U.S., including wetlands, restored after well abandonment;
- f. details of the restoration of waters of the U.S., including wetlands, after well abandonment, addressing hydrology, soils, and vegetation;
- g. a discussion about whether disturbed areas, such as borrow ditches, road embankments, stream banks, road crossings, and impact areas are revegetating adequately and not suffering erosion damage; and
- h. maps and photographs, as appropriate, to illustrate the information presented.

When the performance standards for the well abandonment restoration plan have been met, permittees shall submit a final written compliance report documenting compliance. If well abandonment occurs at the same time as drilling termination, then only one interim and one final compliance report are required provided they are adequate.

7. Sidecasting: Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for up to three months provided that the material is not placed in a manner that will allow it to be dispersed by currents or other forces. The District Engineer may extend the period of side-casting to a period not to exceed 180 days, where appropriate. In wetlands, the top 6 to 12 inches of a trench should generally be backfilled with topsoil from the trench.

8. Adverse impacts to waters of the U.S., including wetlands, shall be avoided and minimized to the extent practicable through the use of alternatives that have less adverse impact on the aquatic environment. Projects shall be designed to pass low flows and expected high flows, to not interfere with the migration of aquatic organisms, avoid the creation of impoundments, and maintain the preconstruction conditions to the extent practicable.



9. All fills and structures above the existing ground elevation in waters of the U.S. shall be constructed and placed so as to minimize adverse impacts to local hydrology. Projects shall not promote the drainage of waters of the U.S. or cause unnecessary impoundment of water.

10. All soil-disturbing activities shall be conducted in a manner that will minimize the extent and duration of exposure of unprotected soils. Appropriate erosion and siltation controls shall be used and maintained in effective operating condition during and after construction until all exposed soil is permanently stabilized. Measures to control erosion and run-off, such as berms, silt screens, sedimentation basins, revegetation, mulching, and similar means, shall be implemented. All damage resulting from erosion and/or sedimentation shall be repaired.

11. Compensatory mitigation shall be provided for unavoidable adverse impacts to waters of the U.S., including wetlands, when appropriate and practicable.

12. Preconstruction Notification (PCN): Prior to construction, a prospective permittee must notify the USACE in accordance with the requirements of the "Preconstruction Notifications" section below if the discharge or work would:

a. cause the loss of greater than 1/10 acre of waters of the U.S.. "Loss of waters of the U.S." is defined as waters of the U.S. that are filled or permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity;

b. result in permanent or temporary adverse effects to forested wetlands;

c. require stream realignment; or

d. occur within any of the following habitat types or specific areas:

1) wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia spp.*), sundews (*Drosera spp.*), and sphagnum moss (*Sphagnum spp.*);

2) baldcypress-tupelo swamps: wetlands comprised predominantly of baldcypress trees (*Taxodium distichum*), and water tupelo trees (*Nyssa aquatica*), that are occasionally or regularly flooded by fresh water. Common associates include red maple (*Acer rubrum*), swamp privet (*Forestiera acuminata*), green ash (*Fraxinus pennsylvanica*) and water elm (*Planera aquatica*). Associated herbaceous species include lizard's tail (*Saururus cernuus*), water mermaid weed (*Proserpinaca spp.*), buttonbush (*Cephalanthus occidentalis*) and smartweed (*Polygonum spp.*). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington, D.C. 20014. Library of Congress Catalog Card No. 80-54185);

3) the area of Caddo Lake within Texas that is designated as a Wetland of International Importance under the Ramsar Convention;

4) the Comal River, the San Marcos River, the Pecos River, and Lake Casa Blanca; or

5) critical habitat for the Concho Water snake (*Nerodia hateri paucimaculata*) - including areas of the Concho and Colorado Rivers and Ivie (Stacy) Reservoir; Houston toad (*Bufo houstonensis*);

Arkansas River shiner (*Notropis girardi*); Devils River minnow (*Dionda diabolis*) – the Devils River and San Felipe Creek Watersheds in Val Verde County, Texas; and or Leon Springs pupfish (*Cyprinodon bovinus*) – Leon Creek from the Diamond Y Spring to a point one mile northeast of the Texas Highway 18 crossing approximately 10 miles north of Fort Stockton, in Pecos County. (see also Appendix A, General Condition 15).

For activities requiring a PCN, the prospective permittee shall not begin the activity until notified in writing by the USACE that the project meets the terms and conditions of the RGP, and any special conditions added by the USACE. In all cases, the USACE will notify the permit applicant whether the proposed project meets or does not meet the terms and conditions of this RGP. The USACE will respond as promptly as practicable to all PCNs.

### **CONDITIONS OF THE RGP**

In addition to the limitations in the scope of work, work authorized by this RGP is subject to the general conditions listed in Appendix A. References in the general conditions to “completion of construction” refer to completion of work within the permit area for the activity. Also, for projects requiring water quality certification, projects are subject to the conditions of the water quality certification that applies.

### **LOCATION OF WORK**

The provisions of this RGP will be applicable to all waters of the U.S., including all navigable waters of the U.S., within the regulatory boundaries of the Fort Worth, Albuquerque, and Tulsa districts of the USACE, within the states of Texas and Louisiana (see Appendixes B and C of the Proposed RGP), with the following exception:

From the Precinct Line Road crossing of the West Fork Trinity River in Tarrant County, Texas, to the State Highway 34 crossing of the Trinity River in Kaufman County, Texas, dredged material cannot be used for cofferdams, equipment ramps, or similar structures. Dredged material may only be used for backfill in those projects where the trench has been completely de-watered. In such cases, dredged material can only be used to within two feet of the top of the trench and must be covered by two feet of clean fill material. Material excavated from these sections of the river must be properly disposed of at an upland site and covered to prevent re-entry into the river or contamination of surface or ground water. The location of all disposal sites must be included in the application for authorization.

The Fort Worth District includes the Sabine River watershed in Sabine, De Soto, and Caddo Parishes in the State of Louisiana.

### **WATER QUALITY CERTIFICATION**

State water quality certification under Section 401 of the Clean Water Act for the proposed RGP is currently being sought from the Texas Commission on Environmental Quality (TCEQ), the Railroad Commission of Texas (RRC), and the Louisiana Department of Environmental Quality (LDEQ).

### **AUTHORIZATION FROM OTHER AGENCIES**

This RGP does not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. The permittee is responsible for obtaining any additional federal, state, or local permits or approvals that may be required, including, but not limited to:

1. When streambed materials such as sand, shell, gravel and marl would be disturbed or removed from state-owned waters in Texas, the permittee may be required to obtain a permit from the Texas Parks and Wildlife Department (TPWD), 4200 Smith School Road, Austin, Texas 78744. All activities occurring on lands owned or managed by the TPWD require a signed agreement from that agency prior to commencing operations.
2. All activities in Texas located on lands under the jurisdiction of the Texas General Land Office (GLO), 1700 North Congress Avenue, Austin, Texas 78701-1495, must have prior approval from that office. The placement of structures onto state-owned streambeds, state-owned uplands, or coastal state-owned lands in Texas may require the issuance of a lease or easement from the GLO.
3. Any work that would be conducted on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that agency.
4. Projects involving government property at USACE reservoirs require submission of detailed design information to the reservoir manager and USACE approval for the proposed activity to occur on government property, including a real estate consent to easement.
5. Activities within a 100-year floodplain may require a floodplain development permit from the local floodplain administrator or, in Texas, the TCEQ Flood Management Unit, (512) 239-4771 (see Appendix A, general condition 31). In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.
6. In accordance with the federal Clean Water Act and Texas statute, a point source discharge of pollutants from an outfall structure associated with activities other than oil and gas exploration, development, and production must be authorized, conditionally authorized, or specifically exempted from regulation under the terms of the Texas Pollutant Discharge Elimination System (TPDES) program through the TCEQ, Water Quality Division (MC-150), P. O. Box 13087, Austin, Texas 78711-3087. In accordance with the federal Clean Water Act and Texas statute, a point source discharge of pollutants from an outfall structure associated with oil and gas exploration, development, and production must be authorized, conditionally authorized, or specifically exempted from regulation by the U. S. Environmental Protection Agency (EPA), Region 6, Water Quality Protection Division (6WQ), 1445 Ross Avenue, Dallas, Texas 75202, and the Railroad Commission of Texas, Oil and Gas Division, 1701 North Congress Avenue, P. O. Box 12967, Austin, Texas 78711-2967, respectively.
7. Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in a disturbance of one or more acres, must be controlled and authorized under Texas Pollutant Discharge Elimination System (TPDES) general permit TXR150000. A copy of the general permit, application (notice of intent), and additional information is available at: <http://www.tceq.state.tx.us/permitting/waterperm/wwwperm/construct.html> or by contacting the TCEQ Storm Water & Pretreatment Team at (512) 239-4433.
8. The use of scrap tires for bank stabilization and erosion control requires notification of the TCEQ Waste Tire Recycling Program, P. O. Box 13087, Austin, Texas 78711-3087.
9. Activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including the transportation of oil or gas prior to the refining of such oil or the use of such gas in manufacturing or as a fuel, as described in Texas Natural Resource Code Annotated §91.101, may require

authorization from the Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, the Federal Energy Regulatory Commission, 3125 Presidential Parkway, Suite 300, Atlanta, Georgia 30340, and/or the Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495.

10. Activities involving the discharge of drilling muds, drill cuttings, or produced brine into waters of the State of Louisiana must have a permit from the Louisiana Department of Environmental Quality, Office of Environmental Services, P. O. Box 82135, Baton Rouge, Louisiana 70884-2135.

11. The construction, operation, maintenance, or connection of facilities at the borders of the U.S. are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official. Activities that would require such authorization and would affect an international water in Texas, including the Rio Grande, Amistad Reservoir, Falcon Lake, and all tributaries of the Rio Grande, may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 North Mesa Street, El Paso, Texas 79902.

12. Projects involving construction of a bridge or equivalent thereof across a navigable water of the United States may require authorization from the Commander, Eighth Coast Guard District (ob), Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 501 Magazine Street, New Orleans, Louisiana 70130-3396.

13. Activities outside the USACE permit area that may affect a federally-listed endangered or threatened species or its critical habitat could require permits from the U.S. Fish and Wildlife Service (FWS) to prevent a violation of the Endangered Species Act under Section 9. For further information, contact the U. S. Fish and Wildlife Service in Arlington: Stadium Centre Building, 711 Stadium Drive East, Suite 252, Arlington, Texas 76011, (817) 277-1100, <http://arlingtontexas.fws.gov> ; Austin: Compass Bank Building, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (512) 490-0057, <http://ifw2es.fws.gov/austintexas/> ; Corpus Christi: TAMU-CC, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 994-9005, <http://ifw2es.fws.gov/corpuschristitexas/> ; Houston: 17629 El Camino Real, Suite 211, Houston, Texas 77058, (713) 286-8282, <http://ifw2es.fws.gov/clearlaketexas> ; or Lafayette: 646 Cajundome Boulevard, Suite 400, Lafayette, Louisiana 70506, (337) 291-3100, <http://southeast.fws.gov/es/lafayette.htm> .

14. Activities may affect state-listed rare, threatened, or endangered species. For a rare, threatened, and endangered species review in the State of Texas, submit projects to: Wildlife Habitat Assessment, Texas Parks and Wildlife Department, 3000 South IH 35, Suite 100, Austin, Texas 78704.

15. Activities in the recharge zone of the Edwards Aquifer and activities in the contributing zone of the Edwards Aquifer that disturb more than 5 acres of land under Edwards Aquifer rules require a Water Pollution Abatement Plan. For further information contact the Edwards Aquifer Authority, 1615 North St. Mary's Street, San Antonio, Texas 78215

## **PRECONSTRUCTION NOTIFICATIONS**

Preconstruction notifications (PCNs) requesting verification from the USACE of authorization under this RGP must be in writing and include a description of the project, proposed construction schedule, and the name, address and telephone number of a point of contact who can be reached during normal business hours. The information may be assembled and submitted in a format convenient to the applicant. All pages, including maps, drawings, figures, sheets, etc., must be on 8 ½ by 11-inch paper or fold easily to 8

½ x 11-inch dimensions. The detail of the information should be commensurate with the size and environmental impact of the project. The description of the project must include at least the following information:

1. The purpose of, and need for, the project.
2. A delineation, determination, and characterization of waters of the U.S., including wetlands, in the area that would be affected by the proposed work, and a description of the project's likely impact on the aquatic environment. Delineations of wetlands must be conducted using the "Corps of Engineers Wetland Delineation Manual", USACE Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987 (on-line edition available at (<http://www.swf.usace.army.mil/pubdata/envIRON/regulatory/jurisdiction/wlman87.pdf>), including all supplemental guidance (currently includes guidance dated October 7, 1991, and March 6, 1992). The supplemental guidance is included in the on-line version and may also be obtained from your USACE district office. In addition, include the width and depth of the water body and the waterward distance of any structures from the existing shoreline.
3. A vicinity map, or maps, on copies of 7.5-minute U. S. Geological Survey (USGS) quadrangle maps, county maps, scaled aerial photographs, or other suitable maps, clearly showing the location of all temporary and permanent elements of the project, including the drilling pad, reserve and mud pit(s), production and storage facilities, access road(s), pipeline(s), coffer dam(s), equipment ramp(s), borrow pit(s), disposal area(s), staging area(s), etc. This map(s) must show the project area in relation to nearby wells, access roads, highways and other roads, and other pertinent features. The distance to the nearest well site (restored or unrestored) must be shown on the map or provided in other discussions about the proposed activity. A ground survey is not required to obtain this map information. Identify all base maps, e.g. Fort Worth, Texas 7.5-minute USGS quadrangle, etc.
4. Plan, profile, and cross-section views of all work (fills, excavations, structures, etc.), both permanent and temporary, in, or adjacent to, waters of the U.S., including wetlands, and a description of the proposed activities and structures, including the drilling pad, reserve and mud system (including the type of drilling fluid being used) and pit(s), production and storage facilities, access road(s), pipeline(s), coffer dam(s), equipment ramp(s), borrow pit(s), disposal area(s), staging area(s), and other project related areas within the USACE permit area(s). The permit area(s) includes all waters of the U.S. affected by activities associated with the project, as well as any additional area of non-waters of the U.S. in the immediate vicinity of, directly associated with, and/or affected by, activities in waters of the U.S. The USACE permit area(s) includes associated drilling pads reserve and mud pits, production and storage facilities, access roads, pipelines, coffer dams, equipment ramps, borrow pits, disposal areas, staging areas, etc. in most cases where they are proposed associated with an exploration and/or production well. The description of the proposed access roads must include such information as the road's height, width, and length, width of the cleared right-of-way, location of each crossing of a water of the U.S., size and spacing of culverts and bridges, and location and dimensions of roadside borrow ditches.
5. The volume of material proposed to be discharged into and excavated from waters of the U.S. and the proposed type and source of the material.
6. A written discussion of the alternatives considered and the rationale for selecting the proposed alternative as the least environmentally damaging practicable alternative. Practicable alternatives that do not involve a discharge into a special aquatic site, such as wetlands, are presumed to have less adverse

impact on the aquatic ecosystem, unless clearly demonstrated otherwise. The PCN must also include documentation that the amount of area impacted is the minimum necessary to accomplish the project.

7. An assessment of the adverse and beneficial effects, both permanent and temporary, of the proposed work and documentation that the work would result in no more than a minimal adverse impact on the aquatic environment.

8. Documentation that the amount of area impacted is the minimum necessary to accomplish the project and, in cases where the activity would result in a change to pre-construction contours and/or drainage patterns, a description of the anticipated impacts of the changes, the reason(s) that the changes are necessary, and documentation that the changes would not result in more than minimal adverse impact on the aquatic environment.

9. A detailed mitigation plan presenting appropriate and practicable measures planned: a) to avoid and minimize adverse impacts to the aquatic environment, particularly associated with temporary elements of the proposed project, and b) to compensate for the remaining unavoidable adverse impacts to the aquatic environment. If compensatory mitigation for unavoidable adverse impacts to the aquatic environment is not proposed, the application must include documentation that the proposed work would have minimal adverse impact on the aquatic environment without compensatory mitigation, why compensatory mitigation would be inappropriate and/or impracticable, and that compensatory mitigation should not be required. The mitigation plan must include a description of proposed appropriate and practicable actions that would restore, enhance, protect and/or replace the functions and values of the aquatic environment unavoidably lost in the permit area because of the proposed work. See Appendix D for more information.

10. A drilling termination and well abandonment site restoration plan. This plan may be included as part of the detailed mitigation plan.

11. An assessment documenting whether any species listed as endangered or threatened under the Endangered Species Act might be affected by, or found in the vicinity of, the USACE permit area(s) for the proposed project. Coordination with the FWS concerning the potential impact of the entire project on endangered and threatened species is encouraged. (See contact information, including website addresses, for FWS offices in “AUTHORIZATION FROM OTHER AGENCIES” section above and Appendix A, General Condition 15).

12. For projects in the State of Louisiana, the comments of the Louisiana Department of Wildlife and Fisheries, P. O. Box 9800, Baton Rouge, Louisiana 70898-9000, (225) 765-2800 on the proposed project.

13. A discussion documenting whether any cultural resources, particularly those historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), would be affected by, or are in the vicinity of, the USACE permit area(s) for the proposed project.

14. The applicant should include any other relevant information, including information on hydrology and hydraulics.

Early coordination with the USACE, well before a final PCN is submitted, is beneficial in many cases.

Address PCNs and inquiries concerning proposed activities to the appropriate district office (see Appendix B for boundaries of district offices):

Fort Worth District: Regulatory Branch, U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF-PER-R, P.O. Box 17300, Fort Worth, TX 76102-0300, telephone: (817) 886-1731, website address: <http://www.swf.usace.army.mil/pubdata/enviro/regulatory/index.asp>

Albuquerque District: El Paso Regulatory Office, U.S. Army Corps of Engineers, Albuquerque District, ATTN: CESP-OD-R, P.O. Box 6096, Fort Bliss, TX 79906-0096, telephone: (915) 568-1359, website address: <http://www.spa.usace.army.mil/reg/>

Tulsa District: Regulatory Office, U. S. Army Corps of Engineers, Tulsa District, ATTN: CESWT-RO, 1645 South 101<sup>st</sup> East Avenue, Tulsa, OK 74128-4609, telephone: (918) 669-7400, website address: <http://www.swt.usace.army.mil/permits/permits.cfm>

## **EVALUATION AND VERIFICATION PROCEDURES**

For all discharges within the habitat types or areas listed below, the USACE will coordinate with the resource agencies as specified in the Nationwide Permit (NWP) general condition on notification (currently General Condition 13(e), Federal Register, Vol. 67, No. 10, Tuesday, January 15, 2002, Vol. 67, No. 30, Wednesday, February 13, 2002, and Vol. 67, No. 37, Monday, February 25, 2002). The habitat types and areas are:

1. wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia sp.*), sundews (*Drosera sp.*), and sphagnum moss (*Sphagnum sp.*);
2. baldcypress-tupelo swamps: wetlands comprised predominantly of baldcypress trees (*Taxodium distichum*), and water tupelo trees (*Nyssa aquatica*), that are occasionally or regularly flooded by fresh water. Common associates include red maple (*Acer rubrum*), swamp privet (*Forestiera acuminata*), green ash (*Fraxinus pennsylvanica*) and water elm (*Planera aquatica*). Associated herbaceous species include lizard's tail (*Saururus cernuus*), water mermaid weed (*Proserpinaca spp.*), buttonbush (*Cephalanthus occidentalis*) and smartweed (*Polygonum spp.*).  
(Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington, D.C. 20014. Library of Congress Catalog Card No. 80-54185);
3. the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention;
4. the Comal River, the San Marcos River, the Pecos River, and Lake Casa Blanca;
5. critical habitat for the Concho water snake (*Nerodia hateri paucimaculata*), including areas of the Concho and Colorado Rivers and Ivie (Stacy) Reservoir; Houston toad (*Bufo houstonensis*); Arkansas River shiner (*notropis girardi*); Devils River minnow (*Dionda diabolis*) – the Devils River and San Felipe Creek Watersheds in Val Verde County, Texas; Leon Springs pupfish (*Cyprinodon bovinus*) – Leon Creek from the Diamond Y Spring to a point one mile northeast of the Texas Highway 18 crossing approximately 10 miles north of Fort Stockton, in Pecos County . (See also Appendix A, General Condition 15);

For activities not requiring a PCN, the prospective permittee may commence construction when it can ensure that all terms and conditions of this RGP can be met. For activities requiring a PCN, the prospective permittee shall not begin the activity until notified in writing by the USACE that the project

meets the terms and conditions of the RGP, and any special conditions added by the USACE. In all cases, the USACE will notify the permit applicant whether the proposed project meets or does not meet the terms and conditions of this RGP. The USACE will respond as promptly as practicable to all PCNs.

It is the permit applicant's responsibility to ensure that all authorized structures and activities continue to meet the terms and conditions set forth herein; failure to abide by them will constitute a violation of the Clean Water Act and/or the Rivers and Harbors Act of 1899. Projects outside the scope of this RGP may be considered for authorization by individual permit.

This RGP shall become effective on the date of the signature of the District Engineers, or their authorized representative(s), and will automatically expire five years from that date unless the permit is modified, revoked, or extended before that date. Verifications by the USACE that an activity is authorized by this RGP are valid until the expiration date of this RGP unless this RGP is modified, revoked, or extended before that date. For activities that have been verified by the USACE as authorized under this RGP, and have commenced, i.e. are under construction, or are under contract to commence, by the verification expiration date, will remain authorized provided the activity is completed within twelve months of the date of expiration, modification, or revocation of the RGP, or by another date determined by the USACE for the specific case, whichever is later, unless discretionary authority is exercised on a case-by-case basis to modify, suspend, or revoke the authorization.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:  
FOR THE DISTRICT ENGINEERS:

Christopher W. Martin  
Colonel, U. S. Army  
District Commander  
Fort Worth District

Miroslav P. Kurka  
Colonel, U. S. Army  
District Commander  
Tulsa District

Bruce A. Estok  
Lieutenant Colonel, U. S. Army  
District Commander  
Albuquerque District



**APPENDIX A**  
**GENERAL CONDITIONS**  
**REGIONAL GENERAL PERMIT**  
**EXPLORATION AND PRODUCTION WELLS**

1. In verifying authorization under this regional general permit (RGP), the Department of the Army has relied in part on the information provided by the permittee. If, subsequent to verifying authorization, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.
2. Structures and activities authorized by this RGP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.
3. This RGP is not an approval of the design features of any authorized project or an implication that such project is adequate for the intended purpose: a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. This RGP does not grant any property rights or exclusive privileges; does not authorize any injury to the property or rights of others; and does not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. This RGP does not relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located.
4. This RGP may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the District Engineer that such action would be in the public interest.
5. Modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim for damages against the United States.
6. This RGP does not authorize interference with any existing or proposed federal project, and does not entitle the permittee to compensation for damage or injury to the structures or activities authorized herein that may result from existing or future operations undertaken by the U.S. in the public interest.
7. No attempt shall be made by permittees to prevent the full and free public use of any navigable water of the U.S.
8. Permittees shall not cause any unreasonable interference with navigation.
9. Permittees understand and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without

expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

10. Permittees shall make every reasonable effort to conduct the activities in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, and trees, particularly hard-mast-producing trees such as oaks and hickories. Permittees shall normally maintain existing buffers around waters of the U.S. and create and/or expand buffers around waters of the U.S. when practicable. Compensatory mitigation plans for projects in, or near, streams, other open waters, or wetlands shall normally include provisions for the establishment, maintenance, and legal protection, e.g. conservation easements, deed restrictions, of vegetated buffers to those waters.

11. Permittees shall allow the District Engineer and his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the activity is being performed in accordance with the terms and conditions of this RGP.

12. Permittees must evaluate the effect that the proposed work would have on historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) prior to the initiation of work. Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest that occur in the permit area. If a known historic property would be encountered, the permittee shall notify the USACE and shall not conduct any work in the permit area that would affect the property until the requirements of 33 CFR Part 325, Appendix C, and 36 CFR Part 800 have been satisfied. If a previously unknown historic property is encountered during work authorized by this RGP, the permittee shall immediately notify the USACE and avoid further impact to the site until the USACE has verified that the requirements of 33 CFR Part 325, Appendix C, and 36 CFR Part 800 have been satisfied.

13. Materials to be placed into waters of the U.S. are restricted to clean native soils and concrete, sand, gravel, rock, other coarse aggregate, and other suitable material. All material used shall be free of toxic pollutants in toxic quantities. Discharges of drilling muds, drill cuttings, and produced brine into waters of the State of Louisiana must have the appropriate authorization from the Louisiana Department of Environmental Quality.

14. Permittees shall coordinate all construction activities in federally-maintained channels and/or waterways for required setback distances with the USACE prior to application for a permit.

15. Activities that are likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), or that are likely to destroy or adversely modify the critical habitat of such species are not authorized. Permittees shall notify the District Engineer if any listed species or critical habitat may be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized.

16. Permittees shall place all heavy equipment working in wetlands on mats, or take other appropriate measures to minimize soil disturbance.

17. Permittees shall use and maintain appropriate erosion and siltation controls in effective operating condition during construction, and permanently stabilize all exposed soil at the earliest practicable date using native vegetation to the maximum extent practicable. Permittees shall remove all excess material and temporary fill and structures placed in waters of the U.S., including wetlands, to upland areas and stabilize

all exposed slopes and stream banks immediately upon completion of construction. Permittees shall return all areas affected by temporary fills and/or structures to preconstruction conditions or better, including revegetation with native vegetation. All material removed must be placed at least 100 feet from any water of the U.S., including wetlands, and adequately contained to prevent the return to any water of the U.S., including wetlands.

18. Permittees shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area.

19. Permittees shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the activity is to temporarily impound water or for authorized detention ponds for stormwater management.

20. Permittees shall properly maintain all structures and fills to ensure public safety.

21. Permittees shall ensure that projects have no more than minimal adverse impacts on public water supply intakes.

22. Stream channelization is not authorized by this RGP and stream realignment is limited to a maximum of 500 linear feet.

23. Permittees shall design facilities to be stable against the forces of flowing water, wave action, and the wake of passing vessels.

24. Permittees are not authorized to discharge dredged or fill material into waters of the U.S. for purposes of disposal into, or reclamation of, an aquatic area, such as a wetland.

25. Permittees shall not use a jet barge or similar equipment for trench excavation.

26. Permittees shall mark structures and fills, particularly in navigable waters of the U.S., when appropriate, so that their presence will be known to boaters.

27. Permittees shall mark intake and/or outfall structures and other fills and structures in navigable waters, when appropriate, so that boaters will notice their presence.

28. This permit does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

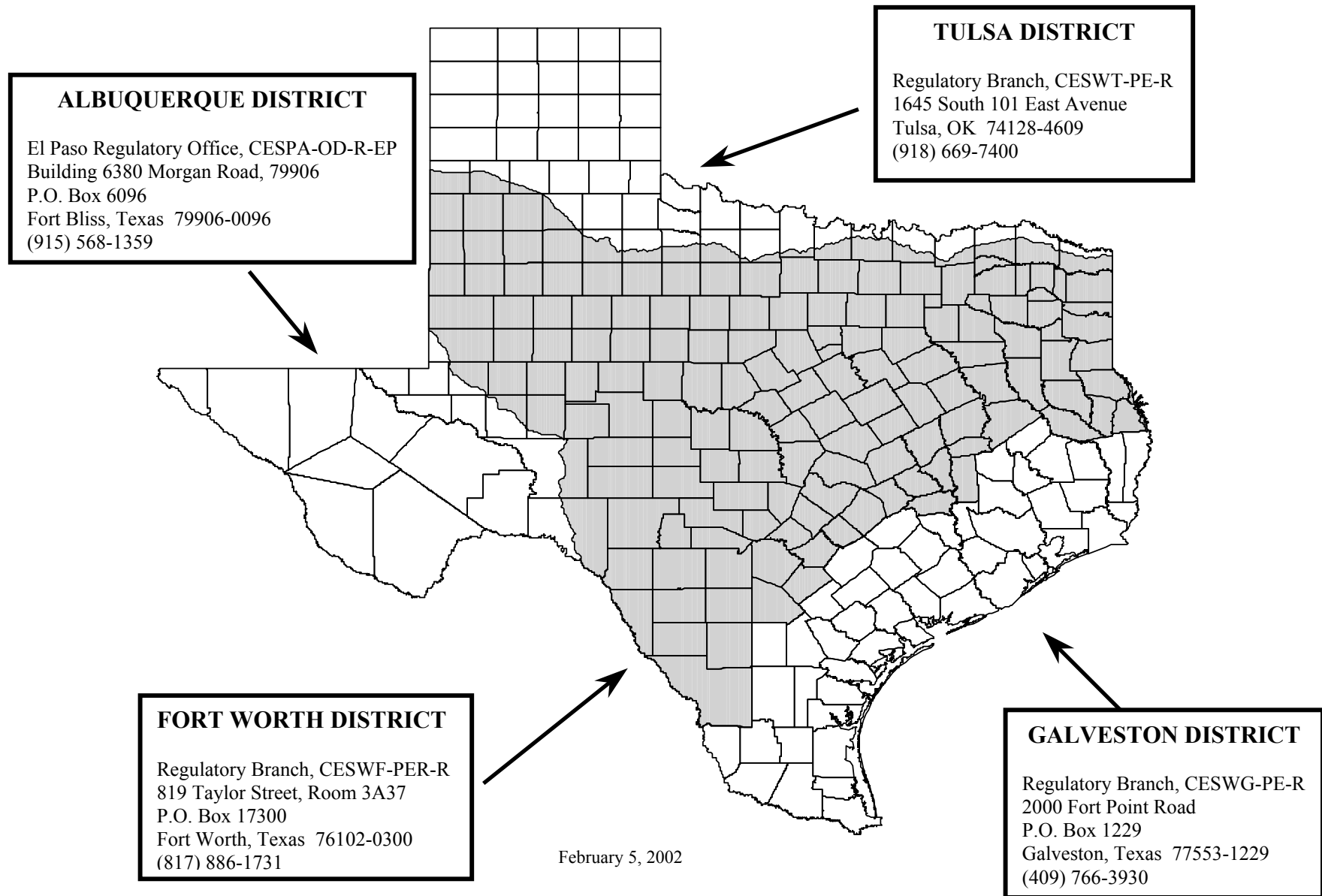
29. Permittees are responsible for compliance with all terms and conditions of this RGP for all activities within the Department of the Army permit area of a project authorized by this RGP, including those taken on behalf of the permittee by other entities such as contractors and subcontractors. Permittees assume all liabilities associated with fills and impacts that are incurred by individuals and/or organizations working under contracts with the permittee. Before beginning the work authorized herein, or directing a contractor to perform such work, permittees shall ensure that all parties read, understand and comply with the terms and conditions of this permit. The USACE strongly encourages preconstruction meetings with all construction activities of the project.

30. Permittees shall conduct dredging and excavation activities with land based equipment rather than from the water body whenever practicable.

31. Permittees must comply with Federal Emergency Management Agency (FEMA), or FEMA-approved local floodplain development requirements in the placement of any permanent above-grade fills in waters of the U.S., including wetlands, within the 100-year floodplain. The 100-year floodplain will be identified through FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps. A permanent above-grade fill is a discharge of dredged or fill material into waters of the U.S., including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the water body to dry land. Structural fills authorized by nationwide permits 3, 25, 36, etc., are not included.

32. For all discharges proposed for authorization in Dallas, Denton, and Tarrant Counties that are within the study area of the "Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries" (May 1986), permittees shall meet the criteria and follow the guidelines specified in Section III of the Record of Decision for the Regional EIS, including the hydraulic impact requirements. A copy of these guidelines is available upon request from the Fort Worth District and at the District website at <http://www.swf.usace.army.mil/pubdata/environ/regulatory/index.asp>.

## APPENDIX B



## **APPENDIX C**

### **NAVIGABLE WATERS OF THE U.S.**

For purposes of Section 10 of the Rivers and Harbors Act of 1899, the following sections of rivers, including their lakes and other impoundments, are considered to be navigable waters of the U.S. that fall within the jurisdiction of the Fort Worth, Albuquerque, and Tulsa districts of the U.S. Army Corps of Engineers in the states of Texas and Louisiana.

**ANGELINA RIVER:** From the Sam Rayburn Dam in Jasper County upstream to U. S. Highway 59 in Nacogdoches and Angelina counties and all U. S. Army Corps of Engineers lands associated with B. A. Steinhagen Lake in Tyler and Jasper counties, Texas.

**BIG CYPRESS BAYOU:** From the Texas-Louisiana state line in Marion County, Texas, upstream to Ellison Creek Reservoir in Morris County, Texas.

**BRAZOS RIVER:** From the point of intersection of Grimes, Washington, and Waller counties upstream to Whitney Dam in Hill and Bosque counties, Texas.

**COLORADO RIVER:** From the Bastrop-Fayette county line upstream to Longhorn Dam in Travis County, Texas.

**NECHES RIVER:** U. S. Army Corps of Engineers lands associated with B. A. Steinhagen Lake in Jasper and Tyler counties, Texas.

**RED RIVER:** From Denison Dam on Lake Texoma upstream to Warrens Bend which is 7.25 miles northeast of Marysville, Texas, and from the U. S. Highway 71 bridge north of Texarkana, Texas, to the Oklahoma-Arkansas Border.

**RIO GRANDE:** From the Zapata-Webb county line upstream to the point of intersection of the Texas-New Mexico state line and Mexico.

**SABINE RIVER:** From the point of intersection of the Sabine-Vernon parish line in Louisiana with Newton County, Texas upstream to the Sabine River-Big Sandy Creek confluence in Upshur County, Texas.

**SULPHUR RIVER:** From the Texas-Arkansas state line upstream to Wright Patman Dam in Cass and Bowie counties, Texas.

**TRINITY RIVER:** From the point of intersection of Houston, Madison, and Walker counties upstream to Riverside Drive in Fort Worth, Tarrant County, Texas.

## APPENDIX D

### MITIGATING ADVERSE IMPACTS TO WATERS OF THE U.S.

U.S. Army Corps of Engineers (USACE) evaluation of a project proposal submitted for authorization under this permit includes a determination of whether the applicant has taken sufficient measures to **mitigate** the project's likely adverse impacts to the aquatic ecosystem (See USACE Regulatory Guidance Letter 02-02 dated December 24, 2003, and USACE district websites for more detailed information.) Applicants should employ the following three-step sequence in mitigating likely adverse project impacts: 1) take appropriate and practicable measures to **avoid** potential adverse impacts to the aquatic ecosystem; 2) employ appropriate and practicable measures to **minimize** unavoidable adverse impacts to the aquatic ecosystem; and 3) undertake appropriate and practicable measures to **compensate** for adverse impacts to the aquatic ecosystem that cannot be reasonably avoided or minimized. **Compensatory mitigation**, then, is the restoration, enhancement, creation, or preservation of wetlands and other waters of the U.S. to compensate for adverse impacts to the aquatic ecosystem that cannot reasonably be avoided or minimized.

Compensatory mitigation should replace those aquatic system functions that would be lost or impaired because of the proposed activity. The appropriate type and amount of compensatory mitigation depends on the nature and extent of the project's likely adverse impact on those functions performed by the aquatic area(s) that would be impacted. These functions include, but are not limited to, flood storage and conveyance; providing habitat for fish, aquatic organisms, and other wildlife, including endangered species; sediment and erosion control; groundwater recharge; nutrient removal; water supply; production of food, fiber, and timber; and recreation. Compensatory mitigation should also be commensurate with the scope and degree of the anticipated impacts and be practicable in terms of cost, existing technology, and logistics, in light of the overall project purpose.

In general, in-kind compensatory mitigation is preferable to out-of-kind and should occur as close to the location of the adverse impacts as practicable, generally in the same watershed. However, environmentally preferable out-of-kind and/or off-site compensatory mitigation may be acceptable. Such mitigation options as mitigation banking and in-lieu fee mitigation may be appropriate when on-site or other off-site compensatory mitigation options are not available or not practicable. In some cases, it is appropriate to provide partial compensation at one location, such as the impact site, with the remainder occurring at an off-site location.

Normally, restoration or enhancement of wetland functions is preferable to wetland creation because the probability of successfully restoring or enhancing wetlands is greater than the probability of successfully creating new wetlands, and restoration and enhancement activities are less likely to impact upland and open water habitats. The preservation of existing wetlands is appropriate as compensatory mitigation only in exceptional situations.

Compensatory mitigation plans should include a thorough description of the proposed mitigation area; a description of all proposed work and structures such as grading, fills, excavation, plantings, and water level control structures; plan and cross-section drawings of pertinent work and structures; a statement explaining how adverse impacts to local hydrology will be minimized; and a proposal for monitoring the success of the proposed mitigation plan. Generally, monitoring should continue for at least five years after mitigation activities are completed, providing planting survival and ecological success requirements have been achieved. To achieve long-term success of a mitigation plan, an appropriate real estate arrangement, such as a deed restriction, may be required.